U. S. DEPARTMENT OF COMMERCE
DANIEL C. ROPER, Secretary
BUREAU OF FISHERIES
FRANK T. BELL, Commissioner

Fishery Circular No. 22

ORGANIZING AND INCORPORATING FISHERY COOPERATIVE MARKETING ASSOCIATIONS

By L. C. SALTER

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1936

r sale by the Superintendent of Documents, Washington, D. C. - - - - Price 5 cents

PUBLICATIONS OF THE BUREAU OF FISHERIES

Administrative reports.—This series contains the annual report of the Commissioner and the four divisional reports; namely, "Alaska Fishery and Fur-Seal Industries", "Fishery Industries of the United States", "Progress in Biological Inquiries", and "Propagation and Distribution of Food Fishes." These papers are distributed only as independent octavo pamphlets; however, a general title page and table of contents for each annual series is distributed for the convenience of those who wish to bind them.

Investigational reports.—These papers include the results of research in applied science in the fields of biology, technology, economics, and statistics of the fisheries. They are distributed only as octavo pamphlets bearing continuous serial numbers. Volume numbers are assigned for the convenience of those who wish to bind them.

Fishery circulars.—These papers contain brief accounts of investigations having economic importance of general interest and include information of timely significance not requiring more extensive treatment. They are octavo pamphlets with independent serial numbers.

Applications for the above publications should be addressed to the Superintendent of Documents, Government Printing Office, Washington, D. C., who will supply them at advertised prices.

Bulletin.—The papers composing the bulletin are on biological subjects, usually technical, and are issued in royal octavo, with continuous pagination. They are distributed only as separates. A general title page, table of contents, and index are issued when the volume is complete.

Statistical bulletins.—Statistical bulletins cover: (*a*) Statistics of the catch and value of fishery products, gear employed in catching, and related fishery industries in the various geographical sections of the United States, these being issued for each section periodically; (*b*) statistics of fishery products landed at Boston and Gloucester, Mass., Portland, Maine, and Seattle, Wash., by American fishing vessels; halibut landed at North Pacific ports, and cold-storage holdings of fish and fish frozen, these being published monthly; and (*c*) production and value of manufactured products and byproducts of the United States and Alaska, this being published annually. These bulletins have independent serial numbers. Those who wish any of them should write to the Bureau of Fisheries.

ORGANIZING AND INCORPORATING FISHERY COOPERATIVE MARKETING ASSOCIATIONS[1]

By L. C. Salter, *Fishery Economist, United States Bureau of Fisheries*

CONTENTS

	Page
Foreword	1
Aims and principles of fishery cooperative associations	2
Fishermen's associations in general	2
Characteristics of cooperative marketing associations	3
Types of associations	6
Functions which a fishery cooperative may perform	7
Conditions or circumstances that may prompt the formation of fishery cooperative marketing associations	7
Necessity of determining basis for establishing an association	8
Cooperating agencies	9
Procedure for organizing an association	10
Preliminary meetings—committees	10
Work of the committee on surveys	11
Work of the committee on organization	12
Formal steps in forming the association	12
Filing the articles of incorporation	12
Organizing the board of directors	13
Adopting bylaws—obtaining members	13
Beginning operations	14
Operation methods and policies	14
Management	14
Facilities	16
Records and accounts	16
Adequate accounting system	16
Patronage refunds	17
Membership relations	19
Legal requirements and corporate structure	20
Incorporated or unincorporated association	20
State statutes	21
Articles of incorporation	22
Requirements of bylaws	24
Membership agreements or contracts	26
Appendixes	26
Appendix A—Suggested legal forms	26
Appendix A–1 [Articles of incorporation]	26
Appendix A–2 [Bylaws]	29
Appendix A–3 [Membership application, stock associations]	35
Appendix A–4 [Membership application, nonstock associations]	36
Appendix B—Suggested list of cooperative literature	36
Appendix C—Fishery cooperative marketing act	37

FOREWORD

Cooperative marketing, long utilized by producers of agricultural products as machinery for marketing products of the farm, has been recently approved by Congress as a method that may be employed by fishermen in marketing aquatic products.

[1] Fishery Circular No. 22. Approved for publication, Apr. 1, 1936.

The Seventy-third Congress enacted, in 1934, Public No. 464 "authorizing associations of producers of aquatic products", which established Federal authority for conducting cooperative marketing enterprises by fishermen in interstate and foreign commerce. The act is comparable to the Capper-Volstead Act, approved by Congress in 1922, by which was established Federal authority for producers of agricultural products to associate and market products of the farm. Public No. 464 is administered by the Secretary of Commerce through the Bureau of Fisheries. Recently there was established in the Division of Fishery Industries of the Bureau a unit in which is centered the cooperative marketing work of the Bureau.

This brief pamphlet is prepared in the interest of fishermen, of State officials, and others who may be assisting in or directing the activities of fishermen, and is intended primarily as a guide in organizing, incorporating, and operating fishery cooperative marketing associations. It is submitted with the realization that it cannot be all inclusive and will not, therefore, serve all purposes and answer all questions relative to the organization, incorporation, and operation of associations. Varying conditions and circumstances in many localities over the country will possibly necessitate deviating from the plans and procedure as suggested herein. Information and suggestions supplementary to this pamphlet may be issued by this Bureau from time to time. Information and assistance of a specific nature may also be supplied upon request. Scientific and technological information and service of the Bureau of Fisheries relative to handling, processing, and marketing fishery products may be made available to fishery cooperatives.

AIMS AND PRINCIPLES OF FISHERY COOPERATIVE ASSOCIATIONS

FISHERMEN'S ASSOCIATIONS IN GENERAL

Collective action by fishermen is not new or recent in its inception. Such group activity on the part of fishermen is of long standing in the maritime countries of Europe and the British Isles. The cooperative movement among fishermen is older and has obtained greater growth proportionately in Canada than in the United States. However, considerable interest has been manifested in the United States during the last few years; and, with the establishment of Federal authority and recognition for such action, the movement no doubt will continue to grow and increase at a more rapid rate.

Cooperative action by fishermen in the United States has taken place in various forms. For the most part, efforts on the part of fishermen to act together have been for the purpose of "bargaining" either as a fishermen association or as a labor or trade union. Bargaining by fishermen in the sale of their catch has been limited almost entirely to contracting with buyers, processors, and manufacturers to determine the price to be paid for their products for the season or other periods of time. As a labor or trade union, fishermen group who operate the boats and gear which belong to dealers, such as processors or canners, sometimes act through committees in determining the "share" if on the "lay" system, or wages if the crews are not on the "lay" system. There are comparatively few fishermen's associations that have established places of business and are engaged in the

marketing of products of their members or in performing, handling, or processing functions incidental thereto. As would be expected, such fishery cooperative marketing associations as do exist are among the fishermen who own small boats, nets, and other gear which they operate individually or with a small crew. Their efforts at cooperative marketing consist for the most part of selling by agreement to a common buyer or to employing the same sales agency. Some associations engage in the processing, canning, and wholesaling of fishery products of their members. This latter activity, however, is at present not a common practice for fishery cooperatives.

CHARACTERISTICS OF COOPERATIVE MARKETING ASSOCIATIONS

As indicated by the foregoing, this pamphlet deals with fishery cooperative marketing associations as such.

The word "cooperate" means "to act or operate jointly with another or others." To this definition should be added "for the benefit of those participating, in proportion to the amount each contributes to the joint action or operation." Cooperative marketing, then, is a specific method of conducting a selling or a merchandising business, by and for a group of individuals, the benefits of which are shared by those participating, in proportion to the amount each contributes to the venture. This paves the way for at least an approximate definition of a fishermen's cooperative marketing association—a business organization owned and controlled by the members thereof, who are producers of aquatic products, which operates as a merchandising organization for the mutual benefit of its members, on a cost basis, and which, after paying for the costs of operations, and making the necessary deductions for reserves and other funds, returns to its members and patrons net savings or earnings in the proportion that each contributed to the volume of business of the association.

To this definition may be added other stipulations and qualifications, but these would only serve to elaborate on the principle as stated above. This definition serves the immediate purpose of enabling a discussion of some of the characteristics of cooperatives as to their operations.

It should be kept in mind that a cooperative association is nothing more nor less than a group of individuals collectively performing services for their mutual benefit and the association through which the group functions is only the machinery necessary in accomplishing the purposes of the group.

The ownership and control of a producers' cooperative marketing association are vested in the producer members or common-stockholders. The acquiring or holding of membership or common stock is restricted to such producers. In some States the statute limits the amount of such membership or common-stock holding to a percentage of the total volume issued. Voting in cooperative associations is customarily limited, even in the absence of a statute requiring same, to one vote per member, irrespective of the number of shares or the amount of membership stock held in the association. In enterprises of a commercial nature, other than cooperatives, ownership and management are controlled through stock ownership; and voting is limited only to the number of certain types of shares held. Such shares are usually freely transferable and may be held by anyone.

Initiated and operated to perform a service, such as the marketing of products of the members or the purchasing of supplies and equipment, or both, a cooperative enterprise may conduct processing or manufacturing operations which are usually incidental to rendering such services. Cooperation has been termed "intelligent self-interest" on the part of those cooperating in that they agree to perform jointly a service for themselves which they cannot provide individually. Therefore, service is the primary object of an association; and if such service is no more advantageous on the average to the producer than he can perform for himself individually, such an association has no reason or excuse for existing.

Cooperative organizations are not immune to the handicaps and pitfalls to which other types of business enterprises are, or may be, subjected. Certain characteristics of cooperatives are decidedly advantageous to such associations. On the other hand some advantages at times prove to be handicaps, at least temporarily. For example, the membership of an association supplies rather regularly a consistent volume of products entailing a minimum cost in securing such volume. By agreement, understanding, or through established policy, the association may advance to producers a percentage of the current market price for the products upon delivery. If the nature of the commodity in question lends itself to commercial storage, the association may borrow thereon and hold such products for more favorable prices, permitting thereby more orderly merchandising instead of "unloading" or "dumping" on the market. In this manner producers are frequently the chief means of financing their associations. Such arrangements enable a cooperative enterprise to secure its volume of products in a comparatively inexpensive manner and with a minimum outlay of capital, which should be commercially advantageous. Thus, an informed and sympathetic membership may constitute the chief asset in the business operations of an association. However, the members' interest is of chief consideration and unless the membership continues to receive the proper information and remains sympathetic and loyal, it may prove to be cumbersome in the operation and management of the association. Some members of cooperatives at times are prompted to exercise their prerogatives as coowners of the enterprise in such a manner as may not be to the interest of proper management, good business principles, or otherwise healthy to the welfare of the association. Such is usually avoided, however, where educational work is conducted among the membership. Thus, in a cooperative marketing enterprise it is necessary that the management should direct an adequate educational program in addition to directing the business and commercial affairs of the association. In this connection it should be pointed out also that differences of opinion in the management and control of the association, and the expense of the all-time task of maintaining a satisfied membership, irrespective of conditions or policy, are at times disadvantageous to a producer cooperative. Cooperative marketing is not a cure-all for the ills of those who would use it. It is, however, a very effective instrument and if properly and adequately employed, it can be of invaluable service to groups and communities of producers. Probably the greatest benefit from the operation of a successful marketing association performing a

particular economic service is that people learn to work together and cooperate with each other, and out of the initial venture additional beneficial services of both social and economic nature will likely evolve.

A cooperative association is a nonprofit enterprise in that the organization makes no profit of or for itself, its officers, or employees. Insomuch as patrons own and control the cooperative enterprise which they have set up to perform a particular service, such patrons are not interested in margins of profit but in net returns. In an association performing a marketing service net returns includes the sale price of the product received by the association less the cost of doing business and the amounts necessary to be set aside for stock dividends, if any, reserves, and other funds. The initial payment to producers for products delivered may be an advance or partial payment which would be a percentage of the current price for such products in which case subsequent payments may be made. In the operation of an association performing a purchasing service the patron pays the net wholesale delivered cost of items purchased, plus the cost of operating and such other additions as may be necessary for reserves and other funds. The "cost of operating" should include a "margin of safety" which may be sufficient to bring the retail price in line with the current market price of such goods. Thus, in a purchasing association net returns would be such savings as the association may have been able to effect out of the estimated "cost of doing business." It is essential, therefore, in a cooperative to maintain overhead and operating costs at a minimum, including compensation for officials and executives.

Thus, a cooperative enterprise utilizes labor, capital, and management in performing a service, the savings or earnings of which are reflected to members in proportion to their patronage. In so doing, cooperatives to some extent compete with other types of enterprises either in obtaining commodities from producers, the resale of the products in markets or in the resale and distribution of supplies and equipment, but such competition is only incidental in the rendering of a service to producers or consumers who may own and control the association.

In enterprises of a commercial nature other than cooperatives, capital, labor, and management are combined primarily to produce returns to investors. The quality of service rendered, or of the commodity produced, is incidental to rewarding capital in the form of dividends and is not determined by producers of the raw product who may use the service. In such an enterprise the owners are the investors as evidenced by shares of stock, and voting is in proportion to the number of shares held. Such shares are usually freely transferable and may be held by anyone. The management is seldom in the hands of more than one or two individuals, which is usually determined by a board of directors elected by stockholders. Such stockholders are not interested in the full price of the product but in dividends which are based on the margin between costs and receipts. Dividends in such an enterprise are distributed not as to patronage by either producer or consumer but on the basis of the capital invested. The interests of the investor are of paramount concern. The initial transaction between producer and buyer us-

ually completes the deal. Whether or not producers supplying commodities or raw products are satisfied depends largely upon competition, expediency, and policy.

TYPES OF ASSOCIATIONS

Among cooperatives there usually exists either the centralized type or the federated type of association. Whether one type is employed in preference to the other usually is determined by the nature and scope of the work contemplated by the association, the nature of the commodity, the facilities for handling, and the extent of the territory to be served by the association.

The centralized type of association is one in which the individual holds either membership or common stock in the association proper and in which all of his contacts are maintained direct with the central office of the association. In the case of the centralized type, the member conducts his affairs directly with the association, and it in turn conducts its affairs directly with him. The central office is the common meeting ground for members, officers, and directors of the association. An association of this type may be organized without respect to districts, areas, communities, or counties. This, however, does not preclude the holding of local or community meetings at which the affairs of the association may be discussed. As a rule, such meetings are not held officially unless authorized by the bylaws, or are a definite part of the program as provided for by the board of directors. Members of the board of directors, the officers and others who are elected to office are nominated and voted upon by the membership in annual meeting at the home office of the association. Unless policy otherwise demands it, officers and directors may be chosen from any section or territory served by the association. The reports of all committees and the business and other affairs of the association are reported and discussed at annual meeting which is open to the membership at large.

In the federated type of association, the membership of the individual producer is held in a local association, either community, county, or State-wide. There may be various numbers and sizes of such locals, generally organized independently of each other and later federated. The number, area, and scope of locals may be restricted by the bylaws. As a rule, bylaws set forth the size and number of the locals and the manner in which they shall have representation, especially if the federated is formed prior to the locals. The producer-member conducts his affairs with the federated association through the officers of his local and at meetings held at the local headquarters, which are provided for in the bylaws. Voting in and control of the federated by the local is customarily in proportion to the number of producers in the local. The members of the board of directors of the federated association may be nominated by the locals and voted upon at annual meeting by delegates from all the locals, or nominated and elected by and from the delegates at annual meeting. Officers could be chosen from the board of directors as in the central type of association. Each local is privileged to elect a number of delegates which is usually in proportion to the total membership of the local, and these delegates represent producer-members of the locals at annual meetings of the

federated. The cost of assembling products by the federated is charged against the local on a basis that permits differentials due to any inequalities among the locals. Patronage refunds to the individual are in proportion to the business he conducts through his local with the federated.

FUNCTIONS WHICH A FISHERY COOPERATIVE MAY PERFORM

Whether a group of fishermen form a cooperative marketing association should be determined in part by existing circumstances and conditions with which the fishermen are confronted. The functions a fishery cooperative performs should depend upon the purposes for which the association was organized. Other operations in addition to the original functions may be undertaken from time to time provided that they are in keeping with the purposes of the association. Experience indicates, however, that as a rule the successful cooperatives are those which began with a definite function to perform and which started operations in an inconspicuous and conservative manner. An axiom that should be remembered by those in charge of cooperatives or those contemplating organizing cooperatives is that "successful cooperatives grow, rather than go into business." Such a policy, if pursued, should enable managers and boards of directors to gain the knowledge and experience necessary for successful management and operation of a marketing association. Too frequently cooperative business ventures are undertaken involving products, the value of which would not be risked by anyone in the group on a private venture of no more experience or preparation.

In consideration of these factors, the following may be considered as functions which might be performed cooperatively by fishermen. They are listed in the order of the more elementary and less complicated operations:

(1) To arrange for a plan whereby fishery products may be transported to plants, canneries, or other markets, with greater facility and at less cost to the individual fishermen.

(2) Elect officers or committees for the purpose of bargaining for the sale of fishery products of producers to manufacturers, processors, wholesalers, or retailers, in the event the group or association does not contemplate operating a merchandising, processing, or packing business.

(3) As a business organization, merchandise the products of its members and perform such processing and manufacturing functions necessary or incidental thereto, and in addition (*a*) purchase cooperatively for members, fishery and marine supplies and equipment; (*b*) operate a cooperative marine railway service for members; and (*c*) arrange for the cooperative financing of members in connection with their fishing operations.

CONDITIONS OR CIRCUMSTANCES THAT MAY PROMPT THE FORMATION OF FISHERY COOPERATIVE MARKETING ASSOCIATIONS

As a general rule, a cooperative association is organized to provide a service that does not exist, or to establish a more satisfactory service and at possibly lower costs, or an additional service for the com-

munity or area in which it is located. Such a service may be in the nature of a social, health, or economic service. In the case of a fishery cooperative marketing association, the service contemplated would probably be of an economic nature. Conditions which might prompt or agitate fishermen to organize a cooperative might be one or more of the following:

(1) Inaccessible markets, necessitating long hauls, individually, by boat or truck to market.

(2) Inadequate market, lack of facilities, poor business organization, with limited outlets which prevent the proper handling and distribution of the total production of the area in a satisfactory manner and at favorable prices.

(3) Continuous abuse of producers through unfair, dishonest, or fraudulent practices.

(4) Extortionate prices charged for boat supplies, nets, twine, corks, leads, and other fishery supplies and equipment.

(5) In the case of a monopoly or the lack of competition among buyers, which results in the paying to fishermen prices that are considered too low in comparison with consumer prices and the price level of commodities generally.

(6) When existing conditions or facilities and methods employed in the distribution and sale of fishery products result in costs and margins that cause retail prices to become prohibitive to normal or increased consumption.

(7) Where it is considered feasible to perform a marketing or purchasing service which might include either fresh products or specialty packs, involving processing, or possibly canning, and which may enable the utilization of otherwise waste products; and to buy fishery and marine supplies and equipment.

There may be other conditions and circumstances which might be the direct cause of fishermen organizing associations. Furthermore, associations may be, and frequently are, formed without the impetus of adverse conditions. Too often disgruntled groups try to bring about changes in conditions over which they are able to exercise little or no control, due to the malady not being as severe or of such duration as they had anticipated or because the groups were unable to command enough volume of products, or were unable to muster enough finances and the proper leadership. Then, too, groups of producers have failed at times because they acquired ideas that they could perform certain functions better and cheaper than those with years of experience who were in the business. Sometimes disgruntled or rabid leadership cause the premature formation of an association without adequate preparation or finances.

NECESSITY OF DETERMINING BASIS FOR ESTABLISHING AN ASSOCIATION

All of the circumstances and conditions which lead to or cause the organization of cooperative associations cannot be enumerated or discussed in such limited space. However, it should not be assumed that the degree to which undesirable conditions exist, or the extent of their effect and adequate remedies therefor are readily and easily determined. Irrespective of the cause or reason, a cooperative marketing association must be considered as a business organization and preparation for its inauguration and operation should be made on

a business basis. The first order of a group concerned with the fishermen's welfare should be to ascertain just whether the conditions presumed or alleged actually exist; and whether it is possible and feasible to effect a satisfactory and permanent remedy therefor. Furthermore, it should be determined whether it has a definite place in the business or trade area it is planned to serve.

Of primary consideration are the questions as to whether an association is needed, the volume of products to be available to the association, what functions or services it is to perform, and whether it is wanted by those in a position to patronize it. Important, also, is the amount of capital that would be required to operate an association until it could become established and make its own arrangements for finances. Further, what is the extent of such immediate financial requirements? Could all or part of the finances required for operation be obtained among the prospective members and patrons of the proposed association? If not, from what other source could the necessary finances be secured and at what costs?

If it is not ascertained in advance of organizing that the association has an opportunity for success as a business concern, the association will probably expire with the accomplishment of the immediate object or purposes for which it may have been organized. The conditions that prompted its formation might thus be remedied, but in time another or the same evil will appear and efforts will be made to either revive and reorganize the old association or set up a new one. After the failure or death of a cooperative, attempts to establish another in its place or revive the old meet with less and less success.

To organize and establish a cooperative marketing association requires considerable time and effort and usually there are expenses to be paid from some source. Potential members and leaders among the producers sometimes are requested to divert their time and efforts from their vocations to assist in organizing the association and soliciting membership. In order to conserve and utilize such marketing machinery, which is laborious and costly to form, and in order to determine the proper and complete answers to the questions enumerated above, it is necessary that a rather comprehensive survey be conducted. This is the slower method, but it is one which should insure a correct beginning if the association is organized. In determining facts as a justification for the association and which should reveal its possibilities for success, the association may be enabled thereby to initiate its functions and plan its program on such a basis as may permit it to become established before members become disinterested. The continued life of the association, however, depends, among other things, upon its successful conduct as a business concern and the quality of the service it performs for its membership.

COOPERATING AGENCIES

Some States, through either the State university, college, State department of fisheries, or markets, have provisions which enable them to offer assistance to groups of producers in holding meetings, conducting surveys, and in organizing and operating cooperative or nonprofit associations. Those contemplating forming an association should seek the cooperation of such department or institution in con-

ducting surveys, analyzing existing circumstances, and conditions preparatory to organizing. Such agencies or institutions are sometimes charged by the State legislature with certain responsibilities in assisting the fishery industry. In some institutions assistance of this nature may be given in the regular course of work providing for social and economic surveys. It is suggested that the assistance of such agencies should be of material benefit to fishermen groups contemplating the organizing of a cooperative marketing association.

PROCEDURE FOR ORGANIZING AN ASSOCIATION

PRELIMINARY MEETINGS—COMMITTEES

Leaders and others interested in having a cooperative marketing association organized should arrange to hold either a series of meetings or a general meeting of producers preparatory to conducting the surveys suggested above. Such meetings should be held in the territory to be served by the association. The principles, purposes, and nature of cooperative marketing associations should be thoroughly explained at each meeting and the opportunity should be provided for a discussion among those present. The producers should be requested to express their ideas as to the probable value of an association in the marketing of their products and the purchasing of supplies. The advisability of appointing a committee to investigate the prospects and possibilities of an association should be discussed. Provided the producers are favorable to the proposition, each group should be asked to elect one, or more if advisable, of their members as delegates to represent their community or section and to serve on a committee to study the prospects and possibilities of establishing and operating an association.

In such cases one of three procedures may be followed: (1) Producers who are present at the meetings agree to become members of and deliver their products to an association to be formed upon the committee's receiving a certain quota of members and the volume of products estimated to be necessary for economical operations, pledged to the association for at least the first year; or (2) the committee make its report and recommendations to producers on its findings as to the prospects and possibilities of an association and then the producers take action accordingly; or (3) the committee be empowered by the producers to conduct the survey, determine the advisability of forming an association, and if decided by the committee to organize, to be the incorporators of the association and, as is customary, its board of directors for the first year. One of the three procedures should be decided upon before the committee is formed. Committeemen should be selected with the plan in mind in order that appropriate instructions and adequate powers may be given the committee. If the committee is composed of the better producers and they are truly representative of the area to be served, the third plan of procedure is usually more satisfactory. Conditions being favorable and the producers agreeing, that procedure is suggested.

Those elected to represent the producers should meet, organize their committee, and elect a chairman, a secretary, and possibly one or more subcommittees. It is essential that a full and complete

account be made and a record thereof be kept of all meetings and other actions of the committee and its subcommittees.

WORK OF THE COMMITTEE ON SURVEYS

One subcommittee should be charged with the responsibility of preparing schedules of questions and other material to be used in conducting a survey. The material should be prepared in simple form so that answers to questions and other information may be obtained with as few complications as possible. For the most part, the committee should determine, by questionnaires and other means, information along the following lines:

1. Prospects for operations.
   - A. Prospective number of producers that the association might expect as members and patrons.
   - B. The status of financial obligations of prospective members and the probable effect of such obligations on possible deliveries of products to and the purchasing of supplies from the association.
   - C. Prospective volumes of business based on production, catches, or landings the potential membership and patrons should make possible to the associations, the attitude of the individual fisherman as to becoming a member of and delivering his products to an association; the functions and services the association should perform:
     - a. Volume of various fishery products to be received and sold fresh or processed, packaged and marketed.
     - b. Volume in dollars of marine supplies and equipment which might be purchased for members and patrons.
2. Existing and potential markets.
   - A. Suitability of the markets now serving the immediate area and the prospects and possibilities thereof as outlets for the volume, type, and kind of products the association will have for sale.
   - B. The adequacy of the available transportation facilities to those markets, what facilities will be necessary for the association to provide, and the approximate cost of either.
   - C. Potentiality of other markets to absorb products of the association, including new or specialty packs which might be developed, and transportation costs thereto.
3. Buildings, auto trucks, and machinery.
   - A. The number of buildings needed, if any; the type of construction and the approximate costs thereof.
   - B. The amount and type of equipment and machinery, if any, to be used and the approximate cost thereof.
   - C. Auto trucks, if any, type, capacities, and costs that will be absolutely necessary for the first year's operations.
4. Finances.
   - A. The approximate maximum financial requirements for the total outlay as contemplated.
   - B. Capital requirements in the form of money, equipment, or machinery, which is obtainable at reasonable cost; and the arrangements necessary to obtain such capital.
   - C. Future possibilities of supplying financial needs of individual producers.

It will be necessary, of course, for the organization committee to meet from time to time and to receive reports from the several subcommittees. Upon completion of the survey, the subcommittee should report to the organization committee, and the information as revealed by the survey should be thoroughly discussed before further action is taken or recommendations are made with respect to organizing the association. The next move by the committee should depend upon the decision reached as a result of the survey and the

extent and nature of the authority vested in it by the producers at the time the committee was created. If the authority and instructions are in accordance with plan number three as suggested above, the organization committee may proceed with its consideration of the advisability of forming an association. If the committee on organization decides an association should be formed, it should then appoint a subcommittee and charge it with the responsibility of preparing the articles of incorporation, proposed bylaws, and membership application forms.

WORK OF THE COMMITTEE ON ORGANIZATION

The subcommittee on drafting the articles of incorporation, bylaws, and membership applications should first consider the type of association that would best suit the needs of the particular area to be served by the association.[2] In either type of association decided upon, the subcommittee should keep in mind that it is essential each section of the area to be served be duly represented in directing the business and other affairs of the association.

Some of the legal phases of cooperative associations and requirements of corporate papers are discussed in a subsequent section of this pamphlet.[3] In the appendix of this pamphlet are suggested forms of corporate papers.[4] These forms may be useful to the committee at least as a guide in drafting the papers for the association. It is advisable to suggest that competent assistance be secured in drafting such papers. The specific State statute under which the association is to be incorporated should be thoroughly understood and followed in order that there may be no mistake in providing appropriate papers for the association.[5]

FORMAL STEPS IN FORMING THE ASSOCIATION

Following the completion of the work on the corporate papers, the subcommittee should make its report to the whole committee on organization. The report should include the corporate papers prepared by the committee for discussion and recommendations for their adoption.

FILING THE ARTICLES OF INCORPORATION

The whole committee on organization would then have the report of the subcommittees on survey and corporate papers upon which to act. Such action would be to either proceed with setting up the association, or make its report with recommendations at meetings of prospective producer-members in the area which elected the committee and await further instructions from the producers. The action taken by the committee would depend upon the authority vested in it at the time it was established. Assuming that the committee when elected, was charged with the responsibility of forming an association, if a majority of the committee deemed such action advisable and if such decision is reached, the committee should then proceed as

---

[2] "Types of associations", p. 6.
[3] "Legal requirements and corporate structure", p. 20.
[4] Appendix "Suggested legal forms", p. 26.
[5] "State statutes", p. 21.

incorporators.[6] The committee members would sign the articles of incorporation and make application for a charter for the corporation. The number of the committee members signing the articles of incorporation cannot be less than the number of incorporators required by the statute. If the incorporators are to serve as directors the first year, a sufficient number of the committee considered necessary to represent properly the producers on the board of directors should sign the articles of incorporation, provided such number shall not be less than the number specified in the statute. Following the filing of the articles of incorporation, the board of directors named in the articles of incorporation should proceed to organize the board and complete the organization of the association.

ORGANIZING THE BOARD OF DIRECTORS

In this procedure a typical case is based on the incorporators being the directors and the officers of the association being in turn members of the board. Statutes vary as to requirements in selecting the officers of the association, but the procedure given here is the more prevalent.

The directors organizing their board should elect the officers of the association from among their number. The officers ordinarily provided for are president, who is usually chairman of the board, one or more vice presidents, a secretary, and a treasurer. Quite often the two last-named officers are combined and the officer elected to fill the place is designated as the secretary-treasurer. If the membership of the board of directors is large, or should it be inconvenient for the members to meet as often as desirable, the board should elect an executive committee that can meet readily and act for the board.[7]

ADOPTING BYLAWS—OBTAINING MEMBERS

Upon completing the organization of the board of directors, the board should advertise and give notice of a general meeting or a series of meetings of producers, who are prospective members, to be held in the area to be served by the association. At these meetings a full and complete report of the findings and actions taken by the organization committee, the incorporators, and the board of directors should be given; also the proposed bylaws should be read and an opportunity be provided for producers and prospective members to discuss them. After the discussion of the bylaws a vote should be called for and taken as to their adoption. Following the adoption of the bylaws an opportunity should be given to fishermen and other producers of aquatic products present to become members of the association. It should be pointed out to producers that membership in the association carries with it an obligation to deliver to the association all of the products produced by the member which the association is handling. Where an agreement is provided and entered into by members and the association, this question is discussed and clarified. Where an agreement is not contemplated, it should be explained that the board of directors and the bylaws, to which the member agrees, govern the delivery of products to the

[6] "Articles of incorporation", p. 22.
[7] Appendix A–2, "Bylaws", "Article VII. Committees", p. 33.

association, and a producer is obliged thereby so long as he is a member of the association. In order to facilitate matters the membership application forms[8] prepared by the organization subcommittee should be distributed in obtaining applications for membership in the association. A membership committee should be appointed by the board of directors, and it should make plans following the meeting or meetings for a general drive to obtain additional members. A considerable number of prospective members probably will be unable to attend the organization meetings; therefore the entire area to be served by the association should be canvassed with a view to giving each eligible producer an opportunity to become a member of the association.

BEGINNING OPERATIONS

At this point it becomes essential for the board of directors to begin making plans for actual operations. Of primary consideration is the matter of finances. The report of the organization committee should indicate possible sources of funds.[9] It may be that the intended operations would not necessitate the immediate borrowing of substantial capital. The association could, and in almost every case should, begin on a modest scale. As stated previously, associations usually develop more permanency when they "grow into business" rather than when they "go into business."

In connection with its financial needs the board should take inventory of the immediate work or service it is to perform and make plans accordingly. It should consider employing a manager or someone to put in charge of operations, depending on the function contemplated. Should the intended operations be elaborate necessitating much time for the consideration of a manager, one or more persons should be selected at least temporarily to make arrangements for the beginning of operations.

If it is deemed a building is necessary, consideration should be given to the leasing or constructing of a building, and the installation of such machinery and other equipment as may be required. The proper plans for a building showing the location of machinery and other equipment are very essential to good management and efficient operations. It is cautioned that actual construction of buildings, the selection and installation of machinery, equipment, etc., be delayed until the advice and counsel of experienced men or specialists can be obtained. The location of a building is quite important and may, if improperly placed or inadequately planned, have considerable adverse effect on plant operations.

OPERATION METHODS AND POLICIES

MANAGEMENT

In practically all cooperative marketing associations complete management of the business and general affairs of the association is vested in a board of directors, except such authority as may be

[8] Appendix A–3, p. 35, and Appendix A–4, p. 36, "Membership applications."
[9] "Information regarding loans to the fishing industry", Circular no. 17 (revised) April 1935, Reconstruction Finance Corporation, Washington, D. C.

otherwise delegated by the statute, the articles of incorporation, or the bylaws.

The members of the first board of directors are specified in the articles of incorporation and serve as board members for the first year, or until their successors are elected and qualify. Thereafter the board of directors, or a portion of its membership, is usually elected each year by the members of the association. Some bylaws provide that terms of office of the directors shall be for an uneven number of years. As an example, if there are six members on the board, two may serve for 1 year, two for 2 years, and two for 3.

The position of board member of a cooperative association is one of honor and responsibility. First, it is a manifestation of trust and confidence on the part of his fellow producers in his honesty, integrity, and ability. The welfare of the association, its success or failure, rests upon the board of directors as a group. The board, representing the membership, possesses and may exercise all the powers the association has under the law. It is the duty of the board to direct and supervise, in a specific or general way, the functions and activities of the association. It may, and usually does, employ a manager, agents, or other personnel to carry out the details of operation and management of the association, but the board of directors is accountable to the members for its stewardship in office.

In the case of a cooperative association of producers, such as a fishermen's association, members of the board of directors are unable to devote the necessary time to supervise in detail the routine business affairs of the association. It becomes necessary, therefore, to employ someone to act as manager or agent for the association.

The first, and probably the most serious, question that confronts a new board of directors is the employment of a manager. The question is invariably asked: "Where can we get a competent man to do what we want done for what we are able to pay?" Usually the caliber of a manager, and what one should pay him, would be determined primarily by the volume of business, the nature and extent of operations, and the investment involved. Needless to state, a $3,600 man should not be employed to conduct a business which might be efficiently and satisfactorily managed by a $2,400 man. On the other hand, it is unlikely that $3,600 results in management can be obtained from the expenditure of $2,400 for a manager—not for long at least. In any event, whether it be a manager drawing a minimum salary and whose functions consist only of routine handling, weighing, and packing fresh fish in the round; shipping, billing, and keeping records of returns and payments; or whether the manager is to head a several hundred thousand dollars concern, there are certain prerequisites necessary: (1) Unquestionable integrity; (2) experience preferred or at least a general knowledge of the business; (3) competency and capability; (4) knowledge of cooperative marketing and appreciation of the spirit of cooperatives, their aims and purposes. It has been stated, and probably wisely, that in seeking a manager for a cooperative it is better to sacrifice some experience and knowledge of the business contemplated in favor of a true appreciation of the spirit, aims, and purposes of the cooperative and the desire to render the best pos-

sible service to the membership. There is a limit, however, to which a board of directors should go in this respect. For instance, if a manager lacks the necessary business training or experience irrespective of a sympathetic attitude and desire to render service, the funds of an association might be dissipated before the association could be placed on a sound business basis. Therefore, sentiment for the principles of cooperation and the desire to be of social service should not outweigh a lack of knowledge of the business and actual experience.

FACILITIES

The extent to which an association should employ machines, machinery, and general equipment in the conduct of its operations is dependent upon the nature, extent, and the volume of its business. Whether elaborate or barely essential equipment is used, the association as a business concern should employ sound business principles and methods. Slipshod and haphazard methods never made any business better. A marketing association is not a benevolent or charitable organization and should not perform services that are not in direct line with its purposes and proper business practices. Special services, favors, or consideration should not be performed for, or be granted to, individual members or to any group of members unless the same or like service is available to other members or to other groups of members.

The facilities and plant equipment of an association should depend upon the type and volume of products handled and the nature of the business in which the association is to engage. Certainly associations with limited capital and small volumes of products should not install machinery and equipment, the economical use of which would require a volume of several times that available, or in prospect, to the association. As a rule, products should not be processed or manufactured unless such operations enhance the price of the product to at least cover the cost of such additional operations. There are times, however, when processing prevents or delays deterioration, or makes useful and salable products which otherwise could not have been sold at the time of receiving.

RECORDS AND ACCOUNTS

The statement above with reference to plant machinery and equipment applies also in the case of bookkeeping and accounting equipment. Sufficient machinery for this purpose should be obtained but it is comparatively easy for a new association to get overstocked with more machines than for which it has adequate use.

ADEQUATE ACCOUNTING SYSTEM

Records and accounts of an association should at all times show the status of the association and each member's interests therein. A card or sheet system should be maintained for the individual member and patron that will reflect at any time the amount of business the individual has transacted through the association. A financial statement should be prepared monthly by the manager. The statement may or may not be furnished to the board of director

as often as every 30 days, depending on how frequently the board may meet, or on the policy adopted. The board of directors or the executive committee should meet, however, at least quarterly, and there should be a meeting of the entire board at least every 6 months. Operating and financial statements should be furnished the executive committee and the board at such regular meetings, and special reports should be requested and rendered as needed.

PATRONAGE REFUNDS

A matter of great importance in the operation of an association is the question as to what policy should be adopted with respect to paying for products when received from members and patrons—as to whether an outright price or an advance payment should be made. The latter policy of making advance payment is becoming more popular among marketing associations. Too often new associations try to make exhibitions of their ability and strength and in so doing sometimes try to embarrass competitors by paying prices which are as high or higher than those paid by dealers. This will often cause members and producers to assume such practice to be the policy and purpose of the association and be attracted thereby. Consequently, when conditions require a change in this practice, necessitating the paying of lower prices or making advance payments, the membership views the change as being other than to its interests and therefore becomes critical and dissatisfied with the association. In which case, the association faces the possibility of a loss in membership and volume or a continuation of the high-price practice. The latter usually results in the association consuming its working capital and having to draw on its surplus or reserve funds in order to hold its membership and meet its obligations.

A more sound policy, and one which is usually more satisfactory to the producer as well as safer to the cooperative, and one which does not unnecessarily stir up competition, is the making of advance payments to producers at the time of delivery. The advance payment may be 70, 80, or 90 percent of the current market price. The remainder of the price for the commodity may be made at the end of a particular season when the final returns on the sale of the product and operating costs are known. To make such seasonal payments it would be advisable to set up seasonal or commodity pools where there is seasonal production during the year and several products are being handled. For instance, there may be established an oyster pool, a shrimp pool, or a scallop pool in case of an association handling large volumes of these several commodities seasonally. Should seasonable pools not be advisable, then final payments for various products may be made on a calendar basis such as quarterly, semiannually, or yearly.

To cover total operating expenses and to provide for reserves and other funds of the association, there should be established an operating fee based on unit of volume or weight or on a percentage of the price of the commodity. Admittedly, such charges should be sufficient to cover all costs of operation and the amounts necessary for reserves and other funds. In time such deductions or fees for reserve funds should be sufficient to cover unforeseen contingencies or

emergencies. If such fees, deductions, and charges have been adequately and wisely determined, and the expected volume was obtained, there should be a net earning or saving at the end of the business year. In other words, a margin of safety should be provided to cover all possible costs of operation.

The disposition of such net earning or saving, if any, should be made at the close of each business year. This is a matter of importance to the welfare of the association and is of interest to the members individually. First and most important, the amount for reserves as may be stipulated in the bylaws, or as may have been determined by the board of directors, should be deducted and set aside. If the association is a stock corporation, dividends on preferred and common stock should be declared next, if at all. The balance of the net earnings or savings, if any, should be returned to the members and other producers who have patronized the association during the last business year. Contrary to most corporations, earnings are not reflected to members (common stockholders) on the basis of capital stock invested, but on patronage in the association. This is known as a patronage dividend or refund, and is based on the amount of business each individual did with the association during the preceding business year.

In some States the statute governing cooperatives, mutual associations, or general corporations may alter the procedure as given above. Some States require that a certain percent of net earnings be utilized for educational purposes among the members and patrons of the association. The statute should be adhered to in this as in other respects. The outline given above generally prevails, however, and where not otherwise specified, or in case the statute fails to specify, the procedure given is suggested. The bylaws or stock certificates stipulate the rate or maximum amount of interest that the association may pay on preferred and common stock.

Where the State statute does not specify otherwise, some associations have at times adopted the policy of either paying no patronage refund to nonmember patrons or a portion of such patronage dividend as is paid to member-patrons. For the purpose of Federal income tax exemption,[10] both member and nonmember patron producers must be given the same and equal treatment with respect to patronage refunds. If, for example, a 2-percent patronage dividend is declared for payment to member patrons, nonmember patrons must receive the same dividend of 2 percent. Discrimination, regardless of how it occurs, between member and nonmember producer patrons will void Federal income-tax exemption to which an association might otherwise be entitled. It has been held to be within the principle of Federal income-tax exemption for cooperatives that patronage dividends due nonmembers may be credited to their accounts until they become members of the association, at which time such dividends are distributed. Patronage refunds, therefore, may be credited to nonmember patrons to apply on the purchase of membership stock in the association.

---

[10] "Discrimination against nonmembers means loss of exemption from income tax" by John Wright (legal staff, Farm Credit Administration), Cooperative Journal, September-October 1935, pp. 157-158.

MEMBERSHIP RELATIONS

It may be said that in the administration and operation of a cooperative marketing association there are three important items around which hinge its success or failure: (1) Efficient management with low overhead costs, (2) sound sales policy, and (3) an informed and sympathetic membership. All three of these are important: without them there can be but temporary success. The record, however, shows fatalities where membership relations were not considered significant enough for the management to be concerned with the attitude of members toward their association. It should be remembered that members of the board of directors and the manager are servants of the member-patrons, and it is their obligation to give at least a periodical account of their stewardship to the members, and good management demands it. There is usually information of a confidential nature that should not go beyond the executive committee or board of directors. It should be remembered, however, that the management of a cooperative association is under far greater obligation to the members thereof than the management of a private corporation is to its common stockholders. In the case of the latter, common stockholders as a rule receive no services as such but are investors and may assist in promoting and financing the corporation. In the case of a cooperative, the members or common stockholders are the association. Upon them depends not finances necessarily but the volume of products, the lifeblood of the association. Viewed in this light, it is anything but good management or desirable administrative policy to fail to keep the membership informed and sympathetic concerning the association.

Every association should have an educational program among the members that is as definitely a part of its administration as the selling of products or the keeping of books and records. The management must at all times continue to "sell" the association to its members. An association cannot depend entirely upon price advantages, if any, to keep its membership alined with it. Such price advantages will vary from time to time and in some cases they may be minimized to the point where they are not significant. On the other hand, there are benefits to be derived from membership in a cooperative enterprise other than an immediate price advantage.

An educational program also should be directed toward overcoming false and misleading statements about the activities of the association which may be circulated by interests opposed to the association.

In this connection the rights and privileges of members or common stockholders should be kept in mind by the management. As stated above, the membership is the association and should be considered and treated as the employer. All rights not otherwise restricted or delegated by law belong to the membership. And in most States the power to amend the bylaws is vested only in the members of an association. Through the bylaws even the policies of operation and management may be ultimately determined by the members.

LEGAL REQUIREMENTS AND CORPORATE STRUCTURE

INCORPORATED OR UNINCORPORATED ASSOCIATIONS?

After or immediately upon deciding to form a cooperative association, the most likely question to be decided upon next is whether or not to incorporate. Probably too few laymen consider this question as being significant. To others the question may prompt another query as to why raise the issue at all, meaning that it is a foregone conclusion the association should incorporate. A strictly legal appraisal of the question is not herewith attempted. However, the following is submitted for consideration by those contemplating the formation of a cooperative marketing association.

Some States have statutes which authorize the formation and operation of unincorporated associations. For the most part, however, unincorporated associations may be, and usually are, organized without respect to such laws. In the absence of State statutes authorizing unincorporated associations they are governed by what is known as common law as to the rights of individuals to barter, trade, and contract with one another. Such an association may have, and usually does have, a constitution which sets forth the purposes, powers, and limitations of the association, and also bylaws which provide for rules and the regulation of its conduct.

An unincorporated association may operate and function as a going concern unless otherwise restricted by specific State statutes. It can sue and be sued, not in its own name, however, but only in the name of its members, in the absence of a statute. Likewise, an unincorporated association, in the absence of statute, is unable to acquire or hold real or personal property in its own name. Furthermore, the constitution or bylaws of such an association are held to be a contract between and binding on all parties who agree to them, and such parties, broadly speaking, are partners and are generally personally liable for the accountability of the actions taken therein. In the absence of a statute, an unincorporated association has no legal existence, except at common law.

A corporation, on the other hand, is something separate and intangible, created by law, and is responsible for its own acts and those of its officers performed in line of duty. It can sue and be sued, acquire, own, hold, and dispose of real or personal property, all in its own name. All action taken in an incorporated association is the responsibility and liability of the corporation as such. Its net assets and total resources are subject to a judgment for its acts, but not the property of its members or common-stock holders. The powers, rights, and limitations of corporations are usually specified in a particular statute authorizing corporations or are provided under general corporation laws.

Nearly all cooperative marketing associations are incorporated. As a rule, associations that are not benevolent societies but which are engaged in business operations and in the trafficking and trading of commodities are incorporated. Those that are small operators performing in a limited area or conducting functions of a noncommercial nature may not deem it necessary to become incorporated. It is recommended, however, that fishery cooperative marketing associations which are business concerns and are engaged in commercial

enterprises be incorporated; therefore, this pamphlet is devoted, for the most part, to a consideration of associations as incorporated associations. The use of the word "association" means an incorporated association unless otherwise specified.

STATE STATUTES

Upon reaching the decision that the association is to be incorporated, the next question before a group of organizers and incorporators would be "Under what statute?"

The Federal Government and each of the State legislatures have the power to create corporations. There is no provision, however, whereby cooperative associations may be incorporated under Federal law. Congress, in enacting Public, No. 464,[11] established the principle of approval by the Federal Government of such functions by fishermen, and authorized that actions in accordance with the provisions thereof might be conducted in interstate and foreign commerce. The act lists functions in which such an association may engage, but the functions of an association are not limited to those specified in the act. A definition of "aquatic products" is provided in the act which interprets it as including "* * * all commercial products of aquatic life in both fresh and salt water * * *." The act further provides that such associations may have marketing agencies in common, and that their members may make the necessary contracts and agreements to effect such purposes.

By way of limitations, the act sets forth that such associations must be operated for the mutual benefit of their members and that (1) voting in such associations shall be limited to one vote per member irrespective of the number of shares or membership stock held in the association; or (2) dividends on stock or membership capital held in the association shall not exceed 8 per centum per annum; and in any case (3) the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

The law does not provide for the granting of Federal charters to associations. To incorporate such an association, therefore, it must be done under an appropriate State statute.

Some State statutes providing for corporations are general in that they do not specify the particular type of business that may be engaged in by an association incorporated thereunder. On the other hand, there are special acts that specify and limit the type of business an association incorporated thereunder may pursue. For example, practically every State has a statute authorizing associations of producers of agricultural products; yet, at the time of this writing, it has not been found that the language of a State statute grants such authority specifically to producers of aquatic products. In some States there are "cooperative" or "mutual" laws of a general character which do not specify who may organize, or become members of, or the type of business of an association organized thereunder. Furthermore, nonprofit associations may be organized under the general corporation laws of some States.

---

[11] Appendix C, "Public, No. 464, 73d Cong., "Authorizing associations of producers of aquatic products", p. 37.

The absence of State laws specifically authorizing fishermen's cooperative associations, or the absence of cooperative laws of a general character should not deter fishermen from organizing and incorporating their associations. There are hundreds of cooperative associations in this country that are organized under general corporation statutes. There is little doubt that many of the States do not have statutes under which a fishery cooperative association could be properly organized, incorporated, and operated. The fact that a fishery association is organized and incorporated under the general corporation statutes of a State need not necessarily affect the cooperative character of such an association if it is properly organized and operated. Although certain provisions are usually contained in cooperative laws, granting what is sometimes considered as certain rights or privileges to cooperatives not enjoyed by other corporations, this should not be a deterring factor in the operations of cooperative associations incorporated under general corporation laws.

It is important, however, to give careful consideration to the selection of the State statute under which an association is to be incorporated. Regardless of the State statute contemplated, it is well for those who are responsible for the formation of a cooperative or nonprofit association to determine definitely that the statute under consideration will permit the corporation to pursue the purpose for which it is to be formed, to perform the functions necessary, incidental and related thereto, and that producers may exercise their rights and privileges as member-owners of a cooperative association in the protection of their rights and interests therein. Furthermore, the provisions and requirements of the statute should be understood as to the general and specific rights, privileges, benefits, or restrictions of an association formed thereunder. After deciding upon the statute under which to incorporate it is necessary to ascertain and follow the requirements thereof. Competent counsel should be sought in selecting the statute and in preparing corporate papers in accordance with the provisions of the statute and which will suit the purposes and proposed functions of the association.

Given elsewhere in this pamphlet are suggested steps in the procedure of forming a cooperative association. It is well, however, to point out some things here in connection with the legal phases of organizing and incorporating an association.

ARTICLES OF INCORPORATION

After determining the State statute under which an association is to be incorporated, the next act of the group forming the association is to prepare the articles of incorporation and file an application for a charter. The articles of incorporation is the legal paper or instrument that is signed by those forming the corporation. It contains certain requirements of the law and other provisions within the law agreed to by the incorporators. It might be said that the various articles of this instrument are the markers by which the course of the corporation ship is chartered. It contains the limitations and privileges authorized by the statute under which the corporation is formed.

Statutes vary as to what shall be contained in the articles of incorporation, but the following are generally required with respect to the main features:

Citation of the statute under which it is to be incorporated.

Name of the corporation.—The corporation must have a name and one that is not a duplication or imitation of another corporation engaged in the same or similar activities. Where required or not restricted by law, it is suggested that the words "cooperative association" be used as part of the name.

Location of the principal office or main place of business within the State.—This does not necessarily mean the place where the majority of the business of the corporation shall be conducted. It establishes the legal residence of the association.

The object or purposes for which the corporation is formed.—These should be stated clearly and should include all things that are in keeping with and related to the principal objects of the corporation. The inclusion of various objects does not mean the association will have to perform such functions, but their inclusion provides the privilege of conducting such functions if desired. Otherwise, it would necessitate amending the charter to do the things that were omitted.

Capital stock.—The total amount, in dollars, of the authorized capital stock, the classes of stock, the number of shares in each class, how and by whom the same shall be acquired, held, and transferred, and the par value of the shares, if it is to be a stock corporation. If not a stock association, specifications for membership should be set forth herein.

Reserve funds.—The manner in which reserves and other funds of the association may be provided, utilized, disposed of, and abolished.

Directors.—The number of directors the association shall have and the names of those comprising the original board of directors who shall serve the first year or until their successors are elected and qualified.

Duration.—Some States require that the length of time for which the corporation shall have legal existence shall be stated in the articles of incorporation.

There are probably other requirements in some States. Every provision in the articles of incorporation must be authorized by law, and the inclusion of a provision that is not authorized is generally void at least as to third parties.

States vary in their requirements as to the procedure in filing the articles of incorporation. As a general rule, however, the articles of incorporation are filed at the office of the secretary of state. In some States the statute requires that upon receiving a certified copy of the articles of incorporation from the office of the secretary of state that the same shall be recorded at the courthouse in the county in which the corporation is to have its main office or its legal address. Upon meeting other requirements specified in the statute in connection with the acquiring of the charter, the corporation can then be said to have legal existence.

REQUIREMENTS OF BYLAWS

After securing the corporation charter, the incorporators should consider the adoption of bylaws for the corporation. The authority to adopt bylaws is usually specifically granted by the State statute under which the organization may be incorporated. However, the power to adopt bylaws exists at common law and such power is vested in the stockholders or members unless the statute specifies some other group. It is desirable that an association adopt bylaws even in the absence of statutory requirements to do so.

The bylaws may be termed rules and regulations to govern the operations and affairs of the association. In this connection, bylaws usually set forth the relationships between the corporation as such and the members or common stockholders thereof. Limitations or requirements, if any, are usually specified in the statute under which the association is incorporated, and such should be complied with in adopting bylaws. Considerable variation exists as to the proper form and contents of bylaws. For the most part, however, it is felt that the following are the main features which are generally provided in bylaws:[12]

The name of the corporation.—The name of a corporation comes from its articles of incorporation. Bylaws are usually headed: "Bylaws of the ———— Association which is hereinafter referred to as "association."

The objects and purposes.—The objects and purposes of a corporation are set forth in the articles of incorporation. Therefore, it is sufficient for the bylaws to state that "the objects and purposes for which this association is formed are those set forth in its articles of incorporation."

Membership and membership relations.—Herein should be definitely stated what shall constitute membership in the association, who shall be eligible for membership in the corporation and upon what conditions and requirements membership in the association may be obtained and continued. Membership here refers to both the holders of membership in nonstock associations and the common-stockholders in associations with stock.

Capital stock certificates.—The bylaws should specify the language that shall be printed on the face of the certificates of common and preferred stock if the association is a stock corporation, or on membership certificates if the association is formed without stock.

Fiscal year and meetings.—Under this subject should be stated the fiscal year of the corporation, the time, place, and manner of calling and conducting regular meetings of the membership. Provision should be made for special meetings of the membership and the time and manner of giving notices thereto. There should be included hereunder the rights and privileges of members, the manner of voting, whether in person or by proxy, and the number of members constituting a quorum at any meeting. In most nonprofit corporations, even though where not required by State statute, it is common practice to limit voting in the corporation to one member, one vote irrespective of the number of shares of stock or the amount of membership capital one may hold in the corporation.

---

[12] Appendix A–2, "Bylaws", p. 29.

Directors and officers.—There should be provided hereunder the directors, officers, their qualifications, and the number thereof; stated, also, should be powers, duties, and functions of officers and directors and their compensation, if any. The management of the business and affairs of the association is usually vested in the board of directors. The board of directors is given power and authority to delegate any of its duties or functions to other parties which are not otherwise prohibited by the articles of incorporation or the statute under which the corporation was formed. Generally, the board of directors selects and employs a manager who conducts the business affairs of the corporation, and to whom the board may issue from time to time instructions as to his duties, functions, and responsibilities. The board of directors is responsible for conditions existing in the corporation and has general stewardship of all the association's affairs.

Expenses and payments.—There should be set up in the bylaws a provision for the handling of products of the organization and its patrons, including charges, fees, and deductions for the handling and sale of same. The bylaws should set forth also the amount of deductions or additions for reserves or other purposes of the association which is usually based on a per unit of value or volume. This provision is usually made in case the association does not have a marketing agreement with its members. In the absence of marketing agreements and provisions expressed in the bylaws with respect to such charges, deductions, and fees, this power is vested in the board of directors, who may set up from time to time schedules of such payments, deductions, and fees, and the board of directors in turn delegates the authority for the execution of such plans to the manager or other appropriate officer of the organization. The payment of fees, charges, and deductions should be provided for also in the event the association is conducting a cooperative purchasing business of supplies and equipment for its members and patrons.

Members' equity in the association.—It is usually well to make provisions in the bylaws for reserves and other funds for any of the purposes of the association: the manner in which the net assets, including reserve funds, of the association may be credited to the members thereof; and provisions for their distribution in the event of liquidation or dissolution of the association, or otherwise.

Accounting and audits.—Bylaws should set forth a requirement for a recognized standard system of accounts and auditing which will show at all times each member's interest in the association: the volume of business each member conducted through the association during the current year's business; and the amounts credited to him on reserves or in special accounts.

There should be stated, also, the manner and order in which the savings or earnings of the association shall be distributed. This should include dividends on common and preferred stock, if a stock association, the amount set aside for reserves, and patronage dividends to members and other patrons who have done business through the association. Such patronage dividends to members and patrons are based on the amount of business, usually in dollars, that each member contributes to the total volume of business of the association.

Patronage dividends are declared out of net earnings or saving after the current indebtedness has been taken care of, preferred and common-stock dividends, if any, have been set aside, and the amount necessary for reserves have been allotted. The rest of the net earnings then may be declared patronage dividends and distributed on the basis of patronage in the organization by members and patrons. Patronage dividends of nonmembers may be credited to them on the books to apply on the purchase of membership stock in the corporation.

Federation.—Within the powers and limitations of the State statute under which the association is incorporated and the articles of incorporation of the association, the bylaws should make provision for the affiliation of the association with other such corporations engaged in similar or related business which would be to the advantage and welfare of the association. Such affiliation may be effected by the purchase of stock or membership in the other corporation.

Amendments.—The bylaws should specify the manner, time, and place in which the bylaws of the association may be amended. The power to amend bylaws is usually stipulated in the statute authorizing the corporation. However, the manner, time, and place of amendment is usually left with the discretion of the respective associations and is set forth in the bylaws.

MEMBERSHIP AGREEMENTS OR CONTRACTS

Some associations may deem it advisable to have a membership agreement or contract between itself and its producing members or patrons governing the delivery of products to the association. Agreements or contracts are in keeping with the powers and purposes of the corporation. They usually are so drawn as to be continuous from year to year unless either party cares to withdraw, in which case notice is given to the other party, within a specified time, of the date provided for such withdrawal.

APPENDIXES

APPENDIX A—SUGGESTED LEGAL FORMS

APPENDIX A–1

ARTICLES OF INCORPORATION

OF

This is to certify that we, the undersigned, all of whom are residents of the State of _____ engaged in the production of aquatic products, hereby voluntarily associate ourselves for the purpose of forming a cooperative, nonprofit association with capital stock, to be operated on a mutual basis under the provisions of chapter ____, public laws of _____, entitled _____, and amendments thereto, and for that purpose adopt these articles of incorporation.

ARTICLE I.—NAME–LOCATION

The name of this association is _____. The principal place of business of this association shall be in _____ in the county of ____ State of _____.

Article II.—Purposes

The objects and purposes for which this association is formed and the nature of its business and operations are:

Section 1. To associate its members and producer-patrons for the purpose of engaging in any activity involving or relating to collecting, catching, taking, planting, producing, buying, receiving, grading, processing, packing, storing, financing, preparing for market, handling, marketing, selling, and/or distributing of aquatic products, or conducive thereof; and to buy, sell, or otherwise handle fishery and marine supplies and equipment; and for the conduct of any activity deemed by the association to be necessary, convenient, proper, or expedient for the accomplishment of such purposes on a cooperative basis for the mutual benefit of the members of this association; provided that the association shall not deal in the aquatic products or fishery and marine supplies and equipment for nonmembers in an amount greater in value than that handled by it for members. The term aquatic products as used herein includes all commercial products of aquatic life in both fresh and salt water.

Sec. 2. To act as a collecting and marketing agency of aquatic products, including fish of all kinds, shellfish, clams, oysters, and scallops and any of the products manufactured therefrom; to carry on any and all activities necessary, convenient, expedient, or proper for the accomplishment of same; to unify and systematize the business of producing aquatic products; to improve the quality, facilitate the distribution thereof, and stabilize the prices of the same; to act as a purchasing agent for its members and producer-patrons of nets, twine, rope, leads, motors, boats, paints, grease, gasoline, oil, and other marine supplies and/or equipment used in or incident to producing, collecting, propagating, catching, or taking of aquatic products.

Sec. 3. To promote, encourage, foster, and facilitate the economic, orderly and efficient production, distribution, and sale of aquatic products.

Sec. 4. To buy, lease, acquire, hold, and control as owner or otherwise, and to pledge, mortgage, and dispose of any interest in any real or personal property as may be necessary, convenient, or proper in the conduct of the business of the association or incidental thereto; to erect, construct, or acquire any interest in and operate any plants, buildings, facilities, or machinery necessary, proper, or incident to the carrying on of its business; to sell or dispose of any or all of its property and assets.

Sec. 5. To borrow money without limitation as to amount of corporate indebtedness or liability, and to give a lien on any of its property as security therefor; to finance and aid in the financing of the catching, collecting, taking, producing, and the marketing of the aquatic products of its members and producer patrons, and to make advance payments and advances to them therefor; to draw, make, accept, endorse, guarantee, execute, and issue promissory notes, bonds, mortgages, bills of exchange, drafts, warrants, certificates, and all kinds of negotiable or transferable instruments and obligations for any purpose that is deemed necessary or proper to further the objects for which this association is formed.

Sec. 6. To form, organize, or set up, own, and control such subsidiary corporations and branches as may be deemed by this association to be necessary and expedient to carry out the purposes of this association, and to buy, hold, own, vote, control, and exercise all the privileges of ownership in the stock and bonds of other corporations or associations engaged in any related activity, and to pledge, mortgage, and dispose of the same; and by membership, stock ownership, joint or common ownership, or control of any instrumentality or personnel, by contract or otherwise, to control and manage or participate in the control and management of such corporations or associations and their activities and affairs; to buy, acquire, hold, control as owner, pledge, sell, and otherwise deal in and dispose of its own capital stock, but such stock held by the association shall not be entitled to vote or to receive dividends.

Sec. 7. To cooperate with other similar associations in creating central, regional or national cooperative agencies, for any of the purposes for which this association is formed, and/or to become a member or stockholder of such agencies now or hereafter formed.

Sec. 8. To conduct educational work among producers of aquatic products concerning cooperation, the adjustment of producing, catching, and taking of aquatic products to prospective demand for aquatic products, and for all other purposes pertaining to cooperation.

Sec. 9. To establish, invest, use, transfer, distribute, or abolish reserves and other funds for any and all of its purposes.

SEC. 10. To do each and everything necessary, suitable, or proper for the accomplishment of any one or all of the purposes, or the attainment of any one or more of the objects herein enumerated which may be conducive to or deemed expedient for the interest or benefit of the association, and to contract accordingly.

SEC. 11. To have and exercise all the powers, privileges, and rights conferred, authorized, or allowed to corporations by the laws of this State and all powers and rights incidental to carrying out the purposes for which this association is formed, except such as are inconsistent with the act under which it is incorporated.

The foregoing shall be construed both as objects and powers and the enumeration thereof shall not be held to limit or restrict in any manner the general powers conferred on this association by the laws of the State of ————, all of which are hereby expressly claimed.

ARTICLE III.—CAPITAL STOCK

SECTION 1. The authorized capital stock of this association shall consist of $————, divided into —— shares of preferred stock of the par value of $—— per share, and —— shares of common stock of the par value of $—— per share.

SEC. 2. The preferred stock of this association may be held by any person, firm, or corporation, and shall be freely transferable. Holders of preferred stock shall not be entitled to vote. Noncumulative dividends of six percent (6%) per annum may be paid thereon when, if, and as declared by the board of directors. Upon any dissolution or distribution of the assets of this association, the holders of the preferred stock shall be entitled to receive up to the par value of their stock plus all declared unpaid dividends thereon before any distribution is made on the common stock.

Preferred stock shall be redeemable and retirable at such times and upon such conditions as shall be determined by the board of directors and set forth in the certificates of preferred stock.

SEC. 3 (*a*). The acquiring of membership in this association shall be by means of the ownership of common stock herein which may be purchased, owned, or held only by persons, firms, or corporations who are producers of aquatic products, and to cooperative associations as defined by an act of Congress, approved June 25, 1934, entitled "An act authorizing associations of producers of aquatic products." After ceasing to be such a producer or cooperative association, no purported assignment or transfer of common stock in the association shall pass to any person not entitled under the foregoing to hold the same, any rights or privileges on account of such stock, or in the management or control of the association. The findings of the board of directors as to original or continued eligibility under the above provisions shall be final and conclusive. The board of directors shall have discretion to permit or deny the acquiring of common stock by persons entitled under the foregoing. The common stock of this association may be transferred only with the consent of the board of directors of the association and only then to producers of aquatic products.

(*b*) Each holder of common stock, or member, shall be entitled to one vote only, regardless of the number of shares held, and no stockholder shall own more than — percent of the number of shares of the issued common stock. Noncumulative dividends in the nature of interest of not to exceed eight percent (8%) per annum may be paid on stock, when, if, and as declared out of any net earnings or savings of the association after the payment of dividends on preferred stock. Upon any dissolution or distribution, after the redemption of preferred stock, the common stock shall be entitled to a distribution of all remaining assets, except as hereinafter provided.

(*c*) The holding of common stock or retention of membership in this association shall be subject to termination or cancelation as provided in the bylaws and the association shall have the right to purchase any of its common stock at its par or book value, of the owner thereof who is not engaged in the production of aquatic products, or of any member whose stock is for sale.

ARTICLE IV.—RESERVES AND FUNDS

Before the paying of any dividends, as aforesaid, reasonable reserves, as determined by the board of directors, may be set aside. Amounts carried to

reserves from business done in any year shall be allocated on the books of the association on a patronage basis for that year, or, in lieu thereof, the books and records of the association shall afford a means for doing so at any time so that in the event of dissolution, or earlier, if deemed advisable, in the sole discretion of the board of directors, such reserves, or any part thereof, may be returned to the members of the association.

After setting aside amounts for reserves and after the payment of dividends, if any, as aforesaid, the balance of the net earnings or savings of the association shall be distributed to members and/or producer patrons on a patronage basis in proportion to the amount of business each contributed to the association. Such patronage refunds may be credited to producers on the books of the association to apply on the purchase of stock in the association, or to be used as working capital by the association and in evidence of which the association may issue certificates of indebtedness.

Article V.—Directors

Section 1. The business and affairs of this association shall be managed by a board of _____ directors, the nomination and election of which shall be provided by the bylaws. The incorporators shall be the directors for the first year, or term, and shall serve until their successors are elected and qualified. The bylaws may provide for a public director and/or a public advisory committee.

Sec. 2. The bylaws of this association may provide that the area in which members of the association reside be divided into districts for the purpose of nominating directors, administering the affairs of the association, or for other purposes.

Article VI.—Miscellaneous

Section 1. This corporation shall exist for _____ (—) years.

Sec. 2. No member of this association shall be personally liable for any debt or financial obligation of this association.

The names and places of residence of the incorporating directors who shall serve the first term or until their successors are elected and qualified, and the number of shares of common stock subscribed by each are as follows:

Name	Address	Number of shares

(All names to appear in this form)

In testimony whereof, we have hereunto set our hands and affixed our seals this ———— day of ————, 19——.

————————.

(All signatures of incorporators to appear in this form)

Witness:

————————

The State of ————, county of ————.

The execution of the foregoing articles of incorporation was this day duly acknowledged before me by ————————, ———————— of the incorporators therein named, for the purposes therein expressed.

Witness my hand and official seal, this the —— day of ————, A. D. 19——.

————————, *Notary Public.*

APPENDIX A–2

BYLAWS

of the ———————— Association which is hereinafter referred to as "association."

Article I.—Purposes

Section 1. The purposes for which this association is formed are as set forth in its articles of incorporation.

ARTICLE II.— MEMBERSHIP

SECTION 1. Membership in this association shall be obtained by the acquiring of one or more of the shares of common stock of this association. The common stock of this association shall be acquired or held only by producers of aquatic products, or cooperative associations as defined by an act of Congress approved June 25, 1934, and entitled "An act authorizing associations of producers of aquatic products." No common shareholder, after ceasing to comply with the foregoing shall be entitled to hold common stock or have any vote or voice in the management and affairs of this association, and no purported assignment or transfer of voting stock in this association shall pass to any person or association not entitled under the foregoing to hold the same, any rights or privileges on account of such stock. The finding of the board of directors as to original or continued eligibility under the above provisions shall be final and conclusive. The board of directors shall have discretion to permit or deny the acquiring or holding of common stock by persons or associations eligible under the foregoing. Common stock of this association may be transferred only with the consent of the board of directors and only then to producers of aquatic products.

SEC. 2. For good and sufficient cause, as determined by the board of directors acting by majority vote, the association may elect to cancel and terminate the membership and all rights, privileges, and interests of any common shareholder upon tender to it or its legal representatives of the fair book value of the shares held by such member, as determined by the board of directors, together with any dividends, or other sums due and unpaid, less any indebtedness due the association from such shareholder. Wilfully failing to comply with the bylaws and regulations of the association, or wilfully continuing in a breach of marketing or purchasing agreement with the association, or wilfully obstructing its purposes and proper activities, or ceasing for such period as shall be determined by the board of directors to patronize the association, shall be deemed sufficient cause for the expulsion of a member, but the enumeration of these causes shall not be taken to exclude any other causes which, in the discretion of the board of directors, shall require such expulsion for the best interests of the association.

SEC. 3. In case of the proposed cancelation of membership or expulsion of any member organization, such member shall be informed in writing of the charges against it at least 10 days before the meeting at which the board of directors shall finally pass upon such cancelation or expulsion, and at such meeting shall have an opportunity to be heard by counsel or in person and to present witnesses in regard thereto.

ARTICLE III.—FORM OF STOCK CERTIFICATES

SECTION 1. Each certificate of common stock of this association shall have the following statement printed on its face:

The common stock evidenced hereby may be held by producers of aquatic products only and may be transferred only to producers of aquatic products with the consent of the board of directors hereof. In the event any of the common stock of this association shall come into the hands of any person who is not a producer of aquatic products he shall have no right to vote by reason thereof.

Each qualified holder of common stock shall be entitled to one vote only regardless of the number of shares held. Noncumulative dividends in the nature of interest, of not to exceed 8 percent per annum, may be paid upon the common stock, if, as, and when declared, out of any net earnings or savings of the corporation, after the payment of dividends, in the nature of interest, of not to exceed 6 percent per annum on the preferred stock. No purported assignment or transfer of common stock shall pass to any person not eligible to hold same, any rights or privileges on account of such stock, or in the management or affairs of the association. When the board of directors of the association is of the opinion that the association has sufficient working capital to enable the association to do so, certificates of common stock shall be retired at their book or par value, whichever is less, in the order in which issued, except that each member shall continue to own at least one share of the common stock. This association shall have the right to purchase any of its common stock at its par or book value, whichever is less, in the event the owner thereof is not engaged in the production of fishery products. This common stock is also subject to all the other terms and conditions stated in the articles of incorporation and bylaws of this association.

SEC. 2. Each certificate of preferred stock of this association shall have the following statement printed on its face:

The preferred stock of this association shall carry no voting rights. Noncumulative dividends of 6 percent per annum shall be paid thereon when, if, and as declared by the board of directors. Upon the dissolution or distribution of the assets of this association

the holders of the preferred stock shall be entitled to receive the full par value of their stock, and all unpaid declared dividends thereon and no more.

The preferred stock evidenced by this certificate may be retired at any time at the option of the association at par plus accrued dividends on giving 30 days' notice to the holder hereof.

Article IV.—Fiscal Year and Meetings

Section 1. The fiscal year of this association shall commence on the first day of ————.

Sec. 2. The annual meeting of the members of this association shall be held at ———— in the county of ————, State of ————, at — o'clock, —. M. on the ———— in ———— of each year, if not a legal holiday, or, if a legal holiday, on the next business day following.

Sec. 3. Special meetings of the members of this association may be held at any time pursuant to a resolution of the board of directors, or upon written petition to the president by ten percent (10%) of the members. Notice of every special meeting shall specify the time, place, and object or objects thereof, and no business other than that specified in the notice shall be considered at any such meeting.

Sec. 4. Written or printed notice of every regular, special, or district meeting of the members shall state the time and place, and in case of special meetings, the objects thereof, and shall be given to each member appearing on the books of the association by mail at least 5 days and not more than 30 days before any such meeting.

Sec. 5. Twenty percent (20%) of the members of the association shall constitute a quorum for the transaction of business at any meeting, provided that not less than five members shall be required to constitute such quorum.

Sec. 6. In all membership meetings each member shall have only one vote irrespective of the number of shares held. Voting by proxy shall be allowed, provided proxy is given in writing. Voting by mail shall be permitted, provided that notice setting forth the proposition to be voted on shall be mailed to each member at least five days before the meeting at which such vote is to be taken, and provided that the notice shall be returned to the secretary of the association, together with the vote of the member thereon.

Sec. 7. The order of business at all regular meetings shall be:

(1) Roll call.
(2) Proof of due notice of meeting.
(3) Reading and disposal of minutes.
(4) Annual reports of officials and committees.
(5) Unfinished business, including other reports.
(6) Election of directors.
(7) New business.
(8) Adjournment.

Article V.—Board of Directors

Section 1. The business and affairs of this association shall be managed, conducted, and controlled by a board of ———— (—) directors who are members of this association and who shall be nominated and elected at the annual meeting of the membership. Of the first elected board of directors ——— members shall be for 1 year; ——— members for 2 years; and ——— members for 3 years, and thereafter each director shall be elected for a period of 3 years except such as shall be chosen to fill vacancies.

Sec 2. The incorporators of this association shall constitute the first board of directors and shall hold office until the first annual meeting of members or until their successors are elected and qualified. Directors thereafter shall be elected annually.

Sec. 3. Upon majority vote of the board of directors prior to the annual meeting, public educational institutions, or State departments from whom the association is receiving cooperation and assistance may be requested in writing to name one or more persons to represent such institutions or departments as public directors on the board of directors of the association, or to compose an advisory committee for the association. The names of such representatives shall be certified in writing to the secretary of the association by such institution or department prior to the annual meeting.

Sec. 4. At any time, by majority vote of the board of directors, the board may propose an amendment to these bylaws whereby the area in which the members

of this association reside may be divided into districts for the purpose of nominating directors to represent the respective districts on the board of directors. The proposed amendment, which shall include the number of districts and appropriate identification of each, the number of directors to be nominated by each district, the time and manner of conducting meetings of members in each district for such nominations, shall be submitted to the membership with the notice for the next ensuing annual meeting following such vote by the board of directors. Procedure thereafter, and at the ensuing annual meeting, relative to the proposed amendment shall be as hereinafter provided for the amendment of these bylaws.

SEC. 5. The annual meeting of the board of directors shall be held previous to the annual membership meeting. Each board of directors shall meet within ten (10) days after the annual meeting of the members, for the purpose of electing officers for the ensuing year, and transacting any other business that shall be proper at such meeting. The board of directors shall meet regularly on the second Tuesday in April, July, and October of each year at the office of the association. Special meetings of the board of directors shall be held whenever called by the president or upon written request of three members of the board of directors, addressed to the secretary, and the president shall call such meeting to be held within 15 days from the date of receipt of such request by the secretary.

SEC. 6. Ten (10) days' notice by mail or five (5) days' by wire of each regular or special meeting shall be given to each director, provided that no defect or failure of notice of regular meetings shall affect the validity of any proceedings taken thereat.

SEC. 7. A majority of the directors shall constitute a quorum for the transaction of business at any meeting.

SEC. 8. The directors shall receive no compensation for their services other than reimbursement for the actual expenses incurred by them in attending meetings or on other official and authorized business of the board of directors, and a per diem of —— for each day traveling to, from, and while in attendance at such meetings, provided that this shall not exceed 3 days for any one meeting. No director shall be a salaried employee of the association.

SEC. 9. Any director may be removed from office for cause by vote of not less than two-thirds of the members present at any annual meeting or at any special meeting called for that purpose, at which a quorum of members must be present. Such director shall be informed in writing of the charges preferred against him at least ten (10) days before such meeting and at such meeting shall have an opportunity to present witnesses and be heard in person or by counsel in regard thereto.

ARTICLE VI.—DUTIES OF DIRECTORS

SECTION 1. *Management of business.*—The board of directors shall have general supervision and control of the business and the affairs of the association and shall make all rules and regulations not inconsistent with law or with these bylaws for the management of the business and the guidance of the officers, employees, and agents of the association. The board shall have installed an accounting system which shall be adequate to the requirements of the business and to the interest of the members therein, and it shall be the duty of the board to require proper records to be kept of all business transactions.

SEC. 2. *Employment of manager.*—The board of directors shall have power to employ or to authorize the employment of a manager and such other employees as may be deemed necessary, and to fix their compensation. The manager shall have charge of the business of the association under the direction of the board of directors.

SEC. 3. *Bonds and insurance.*—The board of directors shall require the manager and all other officers, agents, and employees charged by the association with responsibility for the custody of any of its funds, or property, or the funds or property of others entrusted to it, to give adequate bonds. Such bonds shall be secured from a responsible bonding company and approved by the board of directors, and the cost thereof shall be paid by the association.

SEC. 4. *Audits.*—At least once in each year the board of directors shall secure the services of a competent and disinterested public auditor or accountant, who shall make a careful audit of the books and accounts of the association and render a report in writing thereon, which report shall be submitted to the members of the association at their annual meeting. This report shall inclu-

at least (1) a balance sheet showing the true assets and liabilities of the association; (2) an operating statement for the fiscal period under review which shall show the cost of and income from sales and the gross income or loss from each of the commodities handled during the period; (3) an itemized statement of all expenses for the period under review.

SEC. 5. *Marketing agreements.*—The board of directors shall have the power to carry out the marketing agreements of the association with its producer-members in every way advantageous to the association representing the producers collectively.

SEC. 6. *Depository.*—The board of directors shall have the power to select one or more banks to act as depositories of the funds of the association and to determine the manner of receiving, depositing, and disbursing the funds of the association and the form of checks and the person or persons by whom same shall be signed, with the power to change such banks and the person or persons signing such checks and the form thereof at will.

ARTICLE VII.—COMMITTEES

SECTION 1. The board of directors shall elect from their number an executive committee of three members, one of whom shall be the president, which shall exercise all the powers of the board of directors when the board is not in session; provided that if any dissension or disagreement shall arise at any meeting of the executive committee, any member by notice at such meeting and by a notice in writing mailed to the secretary of the association not more than two days after such meeting may appeal the matter in controversy to the board of directors and the committee shall not take any action thereon except after and in accordance with the action of the board of directors, and provided that the executive committee shall not have authority to remove any member thereof. The executive committee shall keep minutes of all its meetings and submit a copy of such minutes to each director not more than ten (10) days after each meeting.

SEC. 2. The board of directors may appoint such other committees as it deems advisable, fix their compensation, and delegate to them such powers as it deems proper.

SEC. 3. The compensation allowed the members of the executive committee, and other committees, unless otherwise specified, shall be the same as for the members of the board of directors.

ARTICLE VIII.—OFFICERS

SECTION 1. Within 10 days after each annual election the directors shall elect from their own number a president, a vice president, a secretary, and a treasurer. The last-named offices may be combined and the officer filling such position shall be designated secretary-treasurer. The directors may appoint an assistant secretary-treasurer who shall not be a director and need not be a member of the association, who shall hold office until the election and qualification of his successor unless earlier removed by death, resignation, or cause. The president and vice president need only be members of the board of directors.

ARTICLE IX.—DUTIES OF OFFICERS

SECTION 1. The president shall (1) preside at all meetings of members and of the board of directors and the executive committee; (2) call special meetings of the association and of the board of directors; (3) perform all acts and duties usually performed by an executive and presiding officer; and (4) sign all certificates of stock and such other documents and obligations of the association and perform such other duties as may be authorized or directed by the membership or directors.

SEC. 2. The vice president shall perform all the duties of the president in case of the absence or disability of the latter to serve. In case both the president and vice president are unable to perform their duties, or are absent, the stockholders or directors, as the case may be, may appoint a president pro empore.

SEC. 3. The secretary shall keep the minutes of all the proceedings of the stockholders, directors, and executive committee, which shall be attested by him. He shall keep such books as may be required by the board of directors

and shall have charge of the seal and stock books of the corporation. He shall issue and attest all certificates of stock and shall generally perform such duties as may be required of him by the stockholders and directors.

SEC. 4. The treasurer shall perform such duties relating to the finances, accounts, and property of the association as may be prescribed by the board of directors. He shall keep such financial accounts as may be required and shall generally perform such duties as may be required of him by the common-stock holders and directors. On the expiration of his term of office, he shall turn over to his successor or to the board of directors all property, books, papers, and money of the corporation in his hands.

SEC. 5. Assistant secretaries and assistant treasurers shall perform such duties as shall be delegated to them by the secretary and treasurer or the board of directors.

SEC. 6. All checks, demands for money, notes, deeds, mortgages, deeds of trust, or any other form of instrument, obligation, and/or evidence of indebtedness of the association shall be signed in its behalf by such officer or officers or such other person or persons as the board of directors may from time to time authorize to do so.

ARTICLE X.—OPERATION AND MANAGEMENT

SECTION 1. The board of directors or the executive committee shall fix in advance for each season and fiscal year reasonable and uniform rates of charges, deductions, and retains to be made from proceeds of sales and purchases made through the association, on account of any of its services or activities in relation to members, or patrons or their products, and, for the purpose of making the same, may classify the products handled, the services rendered, or the districts served, in any manner that is reasonable, equitable, and conducive to the best interests of the members and the association. In computing freight and other charges, costs, and expenses for any or all products or other goods handled, the directors may allow differentials based upon actual differences entering into the cost of handling such products or supplies.

SEC. 2. This association shall function on a cooperative basis for the mutual benefit of its members.

(1) At the close of any business year, and before the payment of dividends on preferred or common stock, the board of directors may set aside from any net earnings or savings, or other funds received by the association for its use, reasonable reserves and other funds, as may be determined by the board for any of the purposes of the association, except as otherwise provided by law or these bylaws. Any reserves or other funds set aside from business done in any year shall be apportioned on the books of the association on a patronage basis and so credited to the various members of the association in proportion to the amount of business done with each member during the year, or in lieu thereof, the books and records of the association shall afford a means for doing so at any time. Any reserves or other funds, or any part thereof, whether upon dissolution, liquidation, or otherwise, in the sole discretion of the board of directors, shall be distributed to the members of the association in accordance with such apportionment subject to provisions in law or these bylaws. Such interest of the members of the association in funds or reserves held by it may be evidenced by certificates of interest to be issued by the association.

(2) At the end of each year, after setting aside the amounts for reserves or other funds, and after the payment of dividends, if any, on preferred or common stock, the balance of the net earnings or savings of the association for that year shall be distributed to members and/or producer-patrons on a patronage basis in proportion to the amount of business each contributed to the association during the year. Such patronage refunds may be credited to producers on the books of the association, to apply on the purchase of stock in the association by producers, or to be used by the association as short-time working capital and in evidence of which the association may issue certificates of interest, within the sole discretion of the board of directors.

ARTICLE XI.—MISCELLANEOUS

SECTION 1. No member of this association shall be personally liable for any indebtedness or financial obligation of this association.

SEC. 2. It shall be a policy of this association to cooperate with, aid and assist other fishermen's cooperatives, as defined by an act of Congress approved June 25, 1934, entitled "An act authorizing associations of producers of aquatic products", insofar as may be practical, feasible, and to the best interests and welfare of this association and its members.

SEC. 3. After adoption, a copy of these bylaws, preceded by a copy of the articles of incorporation, shall be furnished to each member of the association and to others upon admittance to membership herein, such copies to be in printed pamphlet or mimeographed form.

SEC. 4. The corporate seal of this association shall be circular in form and shall have inscribed thereon the name of the association and the year in which it is incorporated.

ARTICLE XII.—AMENDMENTS

SECTION 1. These bylaws may be altered or amended at any regular or special meeting of the members by the affirmative vote of three-fourths or more of the members present, provided that the proposed alteration or amendment shall be included in the notice or call for the meeting.

* * * * * * *

We, the undersigned, being all of the members of the association, do hereby consent to the foregoing bylaws and do adopt the same as the bylaws of said association.

In witness whereof, we have hereunto subscribed our names this ———— day of ————————, 19——.

_____.

(All names of Members to appear in this form.)

APPENDIX A–3

[Form for stock associations]

APPLICATION FOR MEMBERSHIP

IN THE

_____
(Name of association)

_____
(City) (State)

I, _____, being a producer of aquatic products, hereby make application for membership in and agree to the bylaws of the _____
(Association)
and subscribe for ____ shares of the common or membership stock at $____ per share in the same: the amount of which shall be paid as follows: $____ herewith in cash and the balance of $____ out of deductions on products and supplies handled by the association for me, or out of any patronage refunds or other monies that may be due me by the association, provided that such subscription shall be paid in any event in ____ years, and if not so paid, the amount credited thereon may be canceled by the association and such funds be credited to its reserves.

Signed_____

Address_____

APPENDIX A–4

[Form for nonstock associations]

APPLICATION FOR MEMBERSHIP

IN THE

_____
(Name of association)

_____
(City) (State)

I, _____, being a producer of aquatic products, hereby apply for membership in and agree to the bylaws of _____. Submitted herewith is the initial membership fee of $____. I further agree to pay, in cash, or the same may be deducted from dividends or any other funds due me by the association, annual membership dues of $____ in said association on or before the beginning of each fiscal year thereof so long as I am a member therein; provided the amount and method of paying annual membership dues may be altered or changed by the board of directors of the association.
(Association)

Signed_____

Address_____

APPENDIX B—SUGGESTED LIST OF COOPERATIVE LITERATURE

GENERAL

BAROU, N. Cooperative banking. P. S. King & Son, Ltd., 14 Great Smith St., London, England.

CHRISTENSEN, C. L. 1926. Business set-up of a marketing association. U. S. Dept. Agr., Misc. Circ. 403.

CHRISTENSEN, C. L. 1929. Pooling as practiced by cooperative marketing associations. U. S. Dept. Agr., Misc. Pub. 14.

COOPERATIVE YEARBOOK. The Horace Plunkett Foundation. 10 Doughty St., London, England.

DIGBY, MARGARET. 1928. Producers and consumers. A study in cooperative relations. The Horace Plunkett Foundation. George Routledge & Sons, Broadway House, 68–78 Carter Lane, London, England.

DIGBY, MARGARET. 1930. Report on the opportunities for cooperative organizations in Newfoundland and Labrador. The Horace Plunkett Foundation, pp. 1–12. P. S. King & Son, Ltd., London, England.

ELSWORTH, R. H. 1930. Cooperative marketing and purchasing. U. S. Dept. Agr., Cir. 121.

FEDERAL EMERGENCY RELIEF ADMINISTRATION. Self-help cooperatives, an introductory study. Division of Self-Help Cooperatives.

FETROW, W. W. 1936 (Feb.). Cooperative marketing of agricultural products. Cooperative Division Bull. 3, Farm Credit Administration.

FISHERY SOCIETIES IN SPAIN. The Horace Plunkett Foundation. 10 Doughty St., London, England.

GARDNER, CHASTINA. 1936 (Feb.). Periodical issued by Farmers Marketing and Publishing Associations. Misc. Report 5, Farm Credit Administration.

GEBHARD, DR. HANNES. Cooperation in Finland. Cooperative Fish Selling Soc. p. 119. Williams & Norgate, 14 Henrietta St., Covent Garden, London, England.

HULBERT, L. S. 1929 (Revised). Legal phases of cooperative associations. U. S. Dept. Agr., Bull. 1106.

KNAPP, JOSEPH G., and JOHN H. LISTER. 1935 (Sept.). Cooperative purchasing of farm supplies. Cooperative Division Bull. 1, Farm Credit Administration.

OGATA, KIYOSHI. The cooperative movement in Japan. pp. 5, 6, 99, 100, 194, 316, 319. P. S. King & Son, Ltd., London, England.

PARKER, FLORENCE E. Consumers', credit, and productive cooperation in 1933. Bureau of Labor Statistics, U. S. Dept. of Labor.
PARKER, FLORENCE E. 1934 (Nov.). Operation of local consumers' cooperative societies in 1933. Monthly Labor Review, Vol. 39, No. 5, Bureau of Labor Statistics, U. S. Dept. of Labor.
U. S. DEPARTMENT OF AGRICULTURE. 1935. Sources of information regarding cooperatives. Consumers' Council, Agricultural Adjustment Administration.
U. S. DEPARTMENT OF LABOR. Organization and management of cooperative gasoline and oil associations. Bull. 606, Bureau of Labor Statistics.
U. S. DEPARTMENT OF LABOR. 1934 (Oct.). Organization and management of cooperative housing associations. Bull. 608, Bureau of Labor Statistics.
U. S. DEPARTMENT OF LABOR. 1934 (July). Organization and management of consumers' cooperative associations and clubs. Bull. 598, Bureau of Labor Statistics.
U. S. DEPARTMENT OF LABOR. 1936. Review of cooperative movement throughout the world in 1934. Serial No. R337, Monthly Labor Review, Jan. 1936, Bureau of Labor Statistics.
WEAVER, OTIS T. 1935 (Dec.). Accounting principles for cooperative gin associations. Cooperative Division Bull. 2, Farm Credit Administration.
WALTER, KARL. 1934. Cooperation in changing Italy. The Horace Plunkett Foundation. P. S. King & Son, Ltd., Orchard House, 14 Great Smith St., Westminster, London, England.

PUBLICATIONS OF COOPERATIVE ASSOCIATIONS

EASTERN STATES COOPERATOR. Box 1482, Springfield, Mass. Published by the Eastern States Farmers Exchange.
CANADIAN COOPERATOR, THE. 215 Nelson Street, Brantford, Ontario. Organ of the Cooperative Union of Canada.
CAROLINA COOPERATOR. (Formerly North Carolina Cotton Grower). Fayetteville and Cabarrus St., Raleigh, N. C. Official publication of the North Carolina Cotton Growers Cooperative Association, the Farmers Cooperative Exchange, and the North Carolina State Grange.
CONSUMERS COOPERATION. (Formerly Cooperation). 167 West 12th Street, New York City. Published by the Cooperative League of the U. S. A.
COOPERATIVE BUILDER, THE. (Formerly Cooperative Pyramid Builder). Box 1000, Superior, Wis. Official organ of Northern States Co-op League, Central States Co-op League, Central Co-op Wholesale.
COOPERATIVE JOURNAL. 1731 Eye Street, N. W., Washington, D. C. Organ of the National Cooperative Council.
EQUITY UNION EXCHANGE. Greenville, Ill. Official national organ of the FARMERS EQUITY UNION.
MANITOBA COOPERATOR, THE. (Formerly The Scoop Shovel). Wheat Pool Bldg., Winnipeg, Man. Official organ of Manitoba Cooperative Conference, comprising: Manitoba Pool Elevators, Manitoba Cooperative Poultry Marketing Association, Manitoba Cooperative Dairies, Winnipeg District Milk Producers Association, Wawanese Mutual Insurance Company, Canadian Cooperative Wool Growers, Manitoba Cooperative Wholesale Society, Manitoba Cooperative Livestock Producers, the Cooperative Marketing Board, and the Manitoba Vegetable Growers Cooperative.
PRODUCER-CONSUMER, THE. 517 Fisk Building, Amarillo, Tex. "Owned by farmer cooperatives in Texas, New Mexico, and Oklahoma."

APPENDIX C—FISHERY COOPERATIVE MARKETING ACT

[PUBLIC—No. 464—73D CONGRESS]

[H. R. 9233]

AN ACT

Authorizing associations of producers of aquatic products.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That persons engaged in the fishery industry, as fishermen, catching, collecting, or cultivating aquatic products, or

as planters of aquatic products on public or private beds, may act together in associations, corporate or otherwise, with or without capital stock, in collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged.

The term "aquatic products" includes all commercial products of aquatic life in both fresh and salt water, as carried on in the several States, the District of Columbia, the several Territories of the United States, the insular possessions, or other places under the jurisdiction of the United States.

Such associations may have marketing agencies in common, and such associations and their members may make the necessary contracts and agreements to effect such purposes: *Provided, however,* That such associations are operated for the mutual benefit of the members thereof, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

and in any case to the following:

Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

SEC. 2. That if the Secretary of Commerce shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Commerce may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of Commerce shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade. On the request of such association or if such association fails or neglects for thirty days to obey such order, the Secretary of Commerce shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all the records in the proceedings together with a petition asking that the order be enforced and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Commerce and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review therein, the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court shall, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer, or agent thereof, engaged in carrying on its business, or on any attorney authorized to appear in such proceeding for such association and such service shall be binding upon such association, the officers and members thereof.

Approved, June 25, 1934.

○